

[4910-13]

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

14 CFR Part 91

[Docket No. FAA-2000-7110; Amendment No. 91-262]

RIN 2120-AG94

Special Visual Flight Rules

AGENCY: Federal Aviation Administration (FAA), DOT.

ACTION: Direct final rule; request for comments.

SUMMARY: This action amends the language regarding aircraft operating in accordance with Special Visual Flight Rules (SVFR). Specifically, this action will permit a general aviation pilot at a satellite airport where weather reporting is not available, to depart in meteorological conditions less than basic Visual Flight Rules (VFR) weather minimums provided that the pilot determines that he has the requisite flight visibility. The FAA is taking this action to reduce the number of unnecessary flight delays being faced by general aviation aircraft while providing an equivalent level of safety.

DATES: Effective May 23, 2000. Comments must be received by April 24, 2000.

ADDRESSES: Comments on this document should be mailed or delivered, in duplicate, to: United States Department of

Transportation Dockets, Docket No. FAA-2000-7110, 400 Seventh Street, SW., Room Plaza 401, Washington, DC 20590. Comments may be filed and examined in Room Plaza 401 between 10 a.m. and 5 p.m. weekdays, except Federal holidays. Comments also may be sent electronically to the Dockets Management System (DMS) at the following Internet address: <http://dms.dot.gov>. Commenters who wish to file comments electronically should follow the instruction on the DMS web site.

FOR FURTHER INFORMATION CONTACT: Avis P. Person, Airspace and Rules Division (ATA-400), Air Traffic Airspace Management Program, Federal Aviation Administration, 800 Independence Avenue, SW., Washington, DC 20591; telephone number (202) 267-8783.

SUPPLEMENTARY INFORMATION:

Direct Final Rule Procedure

The FAA anticipates that this regulation will not result in adverse or negative comments; therefore, the FAA is issuing it as a direct final rule. The amendment was recommended by the Aviation Rulemaking Advisory Committee (ARAC) with no dissenting opinions. In addition, the FAA believes that the amendment will be well received by the public.

Unless a written adverse or negative comment or a written notice of intent to submit an adverse or negative

comment is received on this direct final rule within the comment period, the regulation will become effective on the date specified. After the close of the comment period, the FAA will publish a document in the Federal Register indicating that no adverse or negative comments were received and confirming the date on which the final rule will become effective.

If the FAA does receive, within the comment period, an adverse or negative comment, or written notice of intent to submit such a comment, a document withdrawing the direct final rule will be published in the Federal Register, and a notice of proposed rulemaking (NPRM) may be published with a new comment period.

Comments Invited

Although this action is in the form of a final rule and was not preceded by an NPRM, comments are invited on this document. Interested persons are invited to participate in this action by submitting such written data, views, or arguments as they may desire. Comments relating to the environmental, energy, federalism, or economic impact that might result from adopting the proposals in this document also are invited. Substantive comments should be accompanied by cost estimates. Comments must identify the regulatory docket or notice number and be submitted in duplicate to the Rules Docket address specified above.

All comments received, as well as a report summarizing each substantive public contact with FAA personnel on this rulemaking, will be filed in the docket. The docket is available for public inspection before and after the comment closing date.

Commenters wishing the FAA to acknowledge receipt of their comments submitted in response to this document must include a pre-addressed, stamped postcard with those comments on which the following statement is made:

"Comments to Docket No. [FAA-2000-7110]." The postcard will be date stamped and mailed to the commenter.

Availability of Final Rules

An electronic copy of this document may be downloaded using a modem and suitable communications software from the FAA regulations section of the FedWorld electronic bulletin board service (telephone (703) 321-3339), the Government Printing Office's electronic bulletin board service (telephone (202) 512-1661).

Internet users may reach the FAA's web page at <http://www.faa.gov/avr/arm/nprm/nprm.htm> or the Government Printing Office's web page at <http://www.access.gpo.gov/nara> for access to recently published rulemaking documents. This direct final rule also may be accessed on the DMS at the electronic address listed in the **ADDRESSES** section above.

Any person may obtain a copy of this document by submitting a request to the Federal Aviation Administration, Office of Rulemaking, ARM-1, 800 Independence Avenue SW, Washington, DC 20591, or by calling (202) 267-9680. Communications must identify the amendment number or docket number of this final rule.

Persons interested in being placed on the mailing list for future rulemaking documents should request from the above office a copy of Advisory Circular No. 11-2A, Notice of Proposed Rulemaking Distribution System, which describes the application procedure.

Small Entity Inquiries

The Small Business Regulatory Enforcement Fairness Act (SBREFA) of 1996, requires the FAA to comply with small entity requests for information or advice about compliance with statutes and regulations within its jurisdiction. Therefore, any small entity that has a question regarding this document may contact their local FAA official. Internet users can find additional information on SBREFA in the "Quick Jump" section of the FAA's web page at <http://www.faa.gov/avr/arm/sbrefa.htm> and may send electronic inquiries to the following Internet address: 9-AWA-SBREFA@faa.gov.

Background

The current language of § 91.155 and 91.157 have caused confusion as to the application of VFR weather minimums in controlled airspace at satellite airports, and prompted numerous inquiries and requests for clarification. In particular, concerns have been raised as to whether the ceiling at a satellite airport can be determined by a pilot on the ground in takeoff position.

On January 9, 1995, the FAA requested that the Aviation Rulemaking Advisory Committee on Air Traffic Issues (ARAC) review §§ 91.155 and 91.157 and recommend language that would be more easily understood by the aviation community. In response, the ARAC established a working group composed of representatives from the Air Traffic Control Association, Inc. (ATCA), the Aircraft Owners and Pilots Association (AOPA), the Experimental Aircraft Association (EAA), the Helicopter Association International (HAI), and the National Business Aviation Association (NBAA) to review this matter. As a result of this review of §§ 91.155 and 91.157, the working group concluded that misunderstandings occur when applying the visibility minimums on the ground for SVFR operations from a satellite airport. The ARAC recommended that the FAA resolve the problem by permitting part 91 general aviation pilots in takeoff position to determine whether visibility minimums exist for SVFR departure at

satellite airports when weather reporting is not available at the satellite airport.

A satellite airport, is an airport that exists within the same airspace area as the primary airport that determines the airspace designation. SVFR operations are aircraft operating in accordance with clearances within controlled airspace in meteorological conditions less than the basic VFR weather minimums.

Under current rules, an SVFR clearance must be requested and approved by the nearest air traffic control (ATC) facility to operate within a Class B, C, D, or E surface area when the weather does not meet VFR flight weather minimums. This clearance allows operations below 10,000 feet mean sea level (MSL) within the lateral boundaries of a controlled airspace surface area, with limited exceptions, provided the following conditions are satisfied: (1) the pilot receives a clearance from ATC; (2) the pilot remains clear of clouds; (3) SVFR operations are conducted only between sunrise and sunset; and (4) the ground visibility report indicates that at least 1 statute mile of visibility exists. If ground visibility is not reported, flight visibility must be determined to be at least 1 statute mile.

Ground visibility is defined in 14 CFR section 1.1 as the "prevailing horizontal visibility near the Earth's

surface as reported by the United States Weather Service or an accredited observer." Because ground visibility is considered an official report, pilots and air traffic controllers are more likely to rely on a ground visibility report than a flight visibility report which is reported by a pilot. But in the absence of a ground visibility report, § 91.157(c)(2) currently allows a pilot departing under SVFR to rely on a flight visibility report, which may have been reported by a pilot in flight who is not required to be an official weather observer. Flight visibility is also defined in 14 CFR section 1.1 and must be determined by a pilot from the cockpit while an aircraft is airborne. The current rules do not permit flight visibility to be determined by a pilot on the ground.

Discussion of the Recommendation

The ARAC working group recommended that the FAA permit those general aviation pilots operating in accordance with part 91 to determine whether visibility minimums exist for SVFR departure at satellite airports when weather reporting capabilities do not exist at the satellite airport. The working group rationale is that there is little difference between a pilot's ability to determine visibility in flight versus on the ground.

The FAA has reviewed and accepted the ARAC recommendation. Thus, the FAA is amending § 91.157 to allow

pilots to determine if visibility minimums exist on the ground for SVFR departure provided the following conditions are satisfied: 1) the flight is conducted under part 91; and 2) the airport at which the aircraft is located is a satellite airport that does not have weather reporting capabilities. The pilot's visibility determination on the ground for SVFR departure is not an official ground visibility report since the pilot's report is not equivalent to that of an official weather observer. Consequently, the rule expands the term "flight visibility" as opposed to "ground visibility" but limits that expansion to SVFR departure under § 91.157.

This action is intended to reduce unnecessary delays for part 91 operations and clarify the appropriate means of determining visibility minimums for SVFR departure from satellite airports when that airport does not have weather reporting capabilities.

Paperwork Reduction Act

In accordance with the Paperwork Reduction of 1995 (44 U.S.C. 3507(d)), there are no requirements for information collection associated with this rule.

International Compatibility

The FAA has reviewed corresponding International Civil Aviation Organization international standards and recommended practices and Joint Aviation Authorities

regulations, where they exist, and has identified no differences in these proposed amendments and the foreign regulations.

Regulatory Evaluation Summary

Changes to Federal Regulations must undergo several economic analyses. First, Executive Order 12866 directs that each Federal agency shall propose or adopt a regulation only upon a reasoned determination that the benefits of the intended regulation justify its costs. Second, the Regulatory Flexibility Act requires agencies to analyze the economic effect of regulatory changes on small businesses and other small entities. Third, the Office of Management and Budget directs agencies to assess the effect of regulatory changes on international trade. In conducting these analyses, the FAA has determined that this direct final rule: (1) will generate benefits that justify its costs and is not a "significant regulatory action" as defined in the Executive Order; (2) is not significant as defined in the Department of Transportation's Regulatory Policies and Procedures; (3) will not have a significant impact on a substantial number of small entities; (4) will not constitute a barrier to international trade; and (5) will not contain any Federal intergovernmental or private sector mandates. These analyses are presented here in the preamble.

This direct final rule allows pilots who are on the ground (in controlled air space at satellite airports) to determine whether visibility conditions meet or exceed the minimums necessary to allow flight departure under special visual flight rules (SVFR) when these satellite airports do not have weather reporting capabilities. Previously, if satellite airports were experiencing weather conditions that would have permitted takeoff under SVFR, but the weather at the primary airport was not favorable, the pilot was required to delay departure until either the weather conditions improved at the primary airport or the pilot received a flight visibility report indicating at least 1 statute mile of visibility. This direct final rule will clarify the language regarding departure under SVFR and reduce the number of unnecessary flight delays while providing an equivalent level of safety.

The direct final rule is expected to impose no costs on the FAA or airspace users since no additional resources will be needed to implement this rule. In fact, the direct final rule may reduce the unnecessary number of flight delays, however, information is not available to calculate this number. The FAA contends that safety will not be adversely affected as a result of this rulemaking.

In view of the fact that this direct final rule will result in potential cost-savings, while maintaining an

equivalent level of safety, the FAA has determined that this direct final rule will be cost-beneficial.

Final Regulatory Flexibility Determination

The Regulatory Flexibility Act of 1980 establishes "as a principle of regulatory issuance that agencies shall endeavor, consistent with the objective of the rule and of applicable statutes, to fit regulatory and informational requirements to the scale of the business, organizations, and governmental jurisdictions subject to regulation." To achieve that principle, the Act requires agencies to solicit and consider flexible regulatory proposals and to explain the rationale for their actions. The Act covers a wide-range of small entities, including small businesses, not-for-profit organizations and small governmental jurisdictions.

Agencies must perform a review to determine whether a proposed or final rule will have a significant economic impact on a substantial number of small entities. If the determination is that it will, the agency must prepare a regulatory flexibility analysis (RFA) as described in the Act.

However, if an agency determines that a proposed or final rule is not expected to have a significant economic impact on a substantial number of small entities, section 605(b) of the 1980 act provides that the head of the agency may so certify and an RFA is not required. The

certification must include a statement providing the factual basis for this determination, and the reasoning should be clear.

The FAA has conducted the required review of this direct final rule and has determined that it will impose no costs on the FAA or airspace users, and therefore, will not have a significant economic impact on a substantial number of small entities. Accordingly, pursuant to the Regulatory Flexibility Act, 5 U.S.C. 605(b), the Federal Aviation Administration certifies that this direct final rule will not have a significant impact on a substantial number of small entities. However, the FAA solicits comments from the public regarding this determination of no significant impact.

International Trade Impact Assessment

The provisions of this rule will have little impact on trade for both U.S. firms doing business in foreign countries and foreign firms doing business in the United States.

Federalism Implications

The FAA has analyzed this proposed rule under the principles and criteria of Executive Order 13132, Federalism. It has determined that this action will not have a substantial direct effect on the States, on the relationship between the national Government and the States,

or on the distribution of power and responsibilities among the various levels of government. Therefore, the FAA has determined that this direct final rule does not have federalism implications.

Unfunded Mandates Reform Act

Title II of the Unfunded Mandates Reform Act of 1995 (the Act), enacted as Public Law 104-4 on March 22, 1995, requires each Federal agency, to the extent permitted by law, to prepare a written assessment of the effects of any Federal mandate in a proposed or final agency rule that may result in the expenditure of \$100 million or more (when adjusted annually for inflation) in any one year by State, local, and tribal governments in the aggregate, or by the private sector. Section 204(a) of the Act, 2 U.S.C. 1534(a), requires the Federal agency to develop an effective process to permit timely input by elected officers (or their designees) of State, local, and tribal governments on a proposed "significant intergovernmental mandate." A "significant intergovernmental mandate" under the Act is any provision in a Federal agency regulation that would impose an enforceable duty upon State, local, and tribal governments in the aggregate of \$100 million (adjusted annually for inflation) in any one year. Section 203 of the Act, 2 U.S.C. 1533, which supplements section 204(a), provides that, before establishing any regulatory

requirements that might significantly or uniquely affect small governments, the agency shall have developed a plan, which, among other things, must provide for notice to potentially affected small governments, if any, and for a meaningful and timely opportunity for these small governments to provide input in the development of regulatory proposals.

This direct final rule does not contain any Federal intergovernmental or private sector mandate that exceeds \$100 million a year.

Agency Findings

The FAA has determined that this regulation is noncontroversial and unlikely to result in adverse or negative comments. For the reasons discussed in the preamble, I certify that this regulation (1) is not a "significant regulatory action" under section 3(F) of Executive Order 12866 and, therefore, is not subject to review by the Office of Management and Budget; (2) is not a "significant rule" under Department of Transportation Regulatory Policies and Procedures (44 FR 11034, February 26, 1979); and (3) if promulgated, will not have a significant economic impact, positive or negative, on a substantial number of small entities under the criteria of the Regulatory Flexibility Act.

List of Subjects in 14 CFR Part 91

Air Traffic Control, Aircraft, Airplanes, Airports,
Airspace, Weather.

The Amendment

In consideration of the foregoing, the Federal Aviation Administration amends part 91 of Title 14, Code of Federal Regulations as follows:

PART 91 – AIR TRAFFIC AND GENERAL OPERATING RULES

1. The authority citation for part 91 continues to read as follows:

Authority: 49 U.S.C. 106(g), 40103, 40113, 40120, 44101, 44701, 44709, 44711, 44712, 44715, 44716, 44717, 44722, 46306, 46315, 46316, 46502, 46504, 46506, 47122, 47508, and 47528-47531.

2. Section 91.157(c) is revised and paragraph (d) is added as follows:

§ 91.157 Special VFR weather minimums.

* * * * *

(c) * * *

(2) If ground visibility is not reported, unless flight visibility is at least 1 statute mile. For the purposes of this paragraph, the term flight visibility includes the visibility from the cockpit of an aircraft in takeoff position if:

(i) the flight is conducted under this part; and

(ii) the airport at which the aircraft is located is a satellite airport that does not have weather reporting capabilities.

(d) The determination of visibility by a pilot in accordance with paragraph (c)(2) of this section is not an official weather report or an official ground visibility report.

Issued in Washington, DC on March 21, 2000.

Jane F. Garvey
Administrator.